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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,202	11/01/2005	Yuri Shefler	2005-1030	9618

466 7590 10/04/2007  
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EXAMINER
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STULII, VERA

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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10/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/530,202	SHEFLER, YURI	
	Examiner	Art Unit	
	Vera Stulii	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____                                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/04/2005</u> .  | 6) <input type="checkbox"/> Other: ____                           |

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

However, the limitations recited in claims 1-3 are not supported by Applicant's foreign priority document. Therefore claims 1-3 are not entitled to the benefit of the filing date of a prior application filed in a foreign country (Latvian patent application P-02-179 filed October 3, 2002).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**NOTE\*\*\*:** The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Regarding claim 1, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

See MPEP § 2173.05(d).

Claim 4 does not recite all the active method steps involved in the process: cooling, maintaining, filtering etc. Also the language of claim 4 is confusing, since it is not clear whether there is just one or more than one filtering step recited. It is suggested to amend claim 4 to recite the sequence of active method steps.

Claim 4 recites the limitation "the filtrate" in line 11. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bobryshev (RU 2,175,010) in view of Jamnikov (RU 2,044,045).**

In regard to claims 1-9, Bobryshev discloses a method of making vodka comprising the step of preparing an aqueous-spirituos solution with proof value 40% using rectified ethyl alcohol "LUKS" and purified drinking water treated by reverse osmosis (Abstract). In regard to claim 5, all method steps disclosed by Bobryshev appear to be performed at room temperature. In regard to claims 1 and 6, Bobryshev discloses that vodka contains extract of flax seeds (Abstract). In regard to claims 6 and 8, Bobryshev discloses that an aqueous-spirituos solution is purified with activated carbon by its passing through carbon-cleansing battery followed by vodka feeding into finishing tank where a mixture of fructose and ascorbic acid dissolved preliminary in treated water is added (Abstract). Bobryshev discloses that vodka is further filtered (Abstract). Bobryshev discloses preparing vodka with improved organoleptic properties and nutrient value due to use of biologically active complex of flax seeds (Abstract). Bobryshev discloses that biologically active complex of flax seeds forms pleasant aroma-forming complex with ethyl alcohol esters and leads to formation of very mild and pleasant taste and typical vodka aroma (Abstract). Bobryshev discloses that drinking water having hardness less than  $0.1 \text{ mole/m}^3$  according to State Standard 2874-82 is subjected to reverse osmosis (page 3 col. 2 lines 55-57). In summary, Bobryshev discloses a process for preparing vodka comprising the steps of mixing water, neutral spirit (rectified ethyl alcohol "LUX") and flax seed extract; subjecting this mixture to activated carbon filtration; adding sweetening and flavoring agents; subjecting flavored

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mixture to additional filtration (Page 3 col. 2 lines 32-42). Bobryshev discloses that "[f]or production of 1000 dal of vodka "SADKO" components are used in the following ratio: fructose, 5.5-6.5 kg; ascorbic acid, 0.04-0.06 kg; flax an aqueous- -spirituous infusion of the 1-st and the 2-d blend, 3.5-4.5 l; rectified ethyl alcohol "LUKS" and water treated by reverse osmosis, the balance, to obtain the blend value proof 40%" (Abstract).

Jamnikov discloses a process for preparing vodka comprising the steps of mixing purified water with rectified ethyl alcohol "LUX"; filtering aqueous-spirituous mixture; cooling filtered mixture to -4°C; maintaining cooled mixture at this temperature for 8 hours; further filtering on membrane microfilters; natural warming of the mixture to an ambient temperature; bottling (Abstract). Jamnikov also discloses that cooling aqueous-spirituous mixture leads to formation of precipitates that significantly effect (lower) organoleptic and physicochemical properties of vodka (page 3 col. 1 lines 50-54). Jamnikov also discloses purification of water in three stages (Abstract). Jamnikov discloses that on the third stage of water purification water alkalinity is 0.1 mg (page 3 col. 2 lines 17-21). In regard to claim 9, Jamnikov discloses that using microfilters with an optimal pore size of 20 mkm and 0.45 mkm leads to production of crystal clear vodka having high physicochemical and organoleptic properties (page 3 col. 2 lines 30-35).

In regard to claims 1-3, Jamnikov discloses the following amounts of impurities in resulting vodka (mg per liter):

Acetic aldehyde	0.44
Propionic aldehyde	traces
Methyl acetate	1.01
Ethyl acetate	0.5

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Methyl propionate	traces
Ethyl propionate	traces
Methanol	42.5
Propyl alcohol	traces
Iso-butyl alcohol	traces
Iso-amyl alcohol	traces

Bobryshev is silent about cooling aqueous-spirituos mixture after filtration. Since Bobryshev discloses production of vodka by mixing purified water with rectified ethyl alcohol "LUX" and further filtering, and Jamnikov discloses production of vodka by mixing purified water with rectified ethyl alcohol "LUX", cooling the mixture and further filtering, one of the ordinary skill in the art would have been motivated to modify disclosure of Bobryshev and to cool aqueous-spirituos mixture and to maintain it at this temperature for 8 hours after filtration in order to improve organoleptic and physical/chemical properties of vodka as disclosed by Jamnikov. One of ordinary skill in the art would have been motivated to do so, since Jamnikov specifically discloses elimination of impurities in vodka by cooling aqueous-spirituos mixture and maintaining it at this temperature for 8 hours after filtering. One of ordinary skill in the art would have been motivated to do so, since method disclosed by Bobryshev is also directed to removal of impurities and therefore improvement of organoleptic properties of vodka.

Regarding claims 1-3, although the references do not specifically disclose every possible quantification or characteristic of its product, including fusel oil content, sodium bicarbonate, etc, the fusel oil content, sodium bicarbonate and content of other substances would have been expected to be in the claimed range absent any clear and

convincing evidence and/or arguments to the contrary. The combination of references discloses the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of the ordinary skill in the art would recognize that the fusel oil and sodium bicarbonate content, among many other characteristics of the referenced product, would have been a resultant property of the product disclosed therein. The Patent Office does not possess the facilities to make and test the referenced product, and as reasonable reading of the teachings of the reference has been applied and does anticipate the instant claims, the burden thus shifts to applicant to demonstrate otherwise.

Regarding claim 9, since Jamnikov teaches production of crystal clear vodka having high physicochemical and organoleptic properties by employing series of membrane microfilters, one of the ordinary skill in the art would have been motivated to modify disclosure of Bobryshev and to employ filtration using series of microfilters in order to ensure that vodka ready for bottling is crystal clear and has high physicochemical and organoleptic properties as taught by Jamnikov.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VS

  
**KEITH HENDRICKS**  
**PRIMARY EXAMINER**